Filed 2/20/15 In re Daniel V. CA4/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re DANIEL V., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. DANIEL V., Defendant and Appellant.	G049853 (Super. Ct. No. DL048587) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Affirmed as modified.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and James H. Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant, a minor, resisted arrest after the police tried to take him into custody for stealing beer from a grocery store. Following a contested adjudication hearing, the juvenile court found appellant committed commercial burglary, assault and battery on a police officer, and other crimes. At the disposition hearing, the court placed appellant on home probation and ordered him to complete 30 days of community service. The court also set appellant's maximum term of confinement for his offenses at eight years and two months.

Appellant contends the court had no right to set his maximum term of confinement, and even if it did, the term is excessive because the court failed to comply with Penal Code section 654. Respondent does not dispute these claims. In fact, it is well established that when, as here, a juvenile offender is *not* removed from the custody of his parents, the juvenile court lacks authority to set the maximum term of his or her confinement. (Welf. & Inst. Code, § 726, subd. (d)(1); *In re A.C.* (2014) 224 Cal.App.4th 590; *In re Matthew A.* (2008) 165 Cal.App.4th 537; *In re Ali A.* (2006) 139 Cal.App.4th 569.)

Nevertheless, the Attorney General asks that we leave the judgment undisturbed. In the interest of deterring criminal activity, she contends it only makes sense for courts to warn juvenile offenders about the consequences they may have to face if they violate their probation. However, courts can get that message across without determining the juvenile's maximum term of confinement. Telling juvenile offenders they are looking at the prospect of a "lengthy" or "considerable" confinement if they reoffend should give them plenty to think about if they are contemplating future crimes.

Relying on the "no-harm-no-foul-rule," the Attorney General also argues the subject order is superfluous and couldn't possibly prejudice appellant. But in so arguing, the Attorney General overlooks the fact the juvenile court was not empowered to render the order in the first place. (*In re Matthew A., supra*, 165 Cal.App.4th at p. 541.) Thus, the order was not merely superfluous; it was legally unauthorized. (*Ibid.*)

Moreover, as this case demonstrates, "the error of including maximum terms . . . unnecessarily deplet[es] the limited resources of the judicial system" at both the trial and appellate level. (*In re A.C., supra,* 224 Cal.App.4th at p. 592.) The time spent making these unauthorized calculations could be more productively spent on other matters. Therefore, to discourage this practice in the future, we will employ the remedy used by other courts and strike the term from the record. (*Ibid*.; *In re Matthew A., supra*, 165 Cal.App.4th
at p. 541.)

DISPOSITION

The juvenile court's order setting the maximum term of appellant's confinement is stricken. In all other respects, the judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.